IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.MC.No. 600 of 2005

CC.70/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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PETITIONERS/ACCUSED:

1. ABDUL NAZIR, "SHARIF MANZIL,
   P.O.KULLAM, KOYILANDY, KOZHIKODE.

2. FIROZ C., CHATHOTH (ALFA),
   P.O.PAYYOLI- 673 523.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS/COMPLAINANT & STATE:

1. P.I.MUHAMMED MUBEER, S/O.MUHAMMED
   IBRAHIM, PARAPPURATH ILLATHPARAMBIL,
   P.O.. TIRUR.

2. STATE OF KERALA, REP. BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 600 of 2005

ORDER

Petitioners are the accused in C.C.No.70/03 on the file of the Judicial First Class Magistrate's Court, Tirur, registered on the basis of a private complaint filed by the first respondent complaining of commission by the petitioners of an offence punishable under Section 420 IPC. The prayer in this Crl.M.C. is to quash Annexure-I complaint in C.C.No.70/03 aforesaid.

2. The first respondent filed Annexure-I complaint complaining that the petitioners approached him for sub-dealership in Kozhikode District under the petitioners' concern Mubir Trading Company at Tirur, which is having wholesale distributorship in Malappuram, Kozhikode and Wayanad Districts for the products of Miracle Foods International Ltd.; that on the first respondent agreeing to give the sub-dealership, the accused gave a cheque for Rs.15,000/- on 6.3.2002 and

effected purchase of articles; that again on 9.3.2002, a Demand Draft for Rs.15,000/- was issued and purchases were effected and again, a cheque for Rs.10,078/- was issued on 31.3.2002; that the total value of the articles so purchased amounted to Rs.80,022/-, but the amount paid as aforesaid is only Rs.40,078/- and that the petitioners have cheated him by not paying the balance amount. According to the petitioners, non payment of the balance amount by them, if any, gives rise only to a cause of action for a civil suit for recovery of the amounts and that no offence of cheating stands made out and the complaint, therefore, deserves to be quashed.

3. Going by the averments in the complaint, purchases were effected on two occasions, in the first instance, giving a cheque for Rs.15,000/- and on the second occasion, giving a Demand Draft for Rs.15,000/- and thereafter a further amount of Rs.10,078/- was also paid on 31.3.2002 by way of cheque. If at all the intention was to commit

cheating, there was no occasion to make a further payment of Rs.10,078/- on 31.3.2002, after having effected purchases, issuing the cheque and the draft on the earlier two occasions. In the circumstances, non payment of the balance amount, as rightly contended by the petitioners, gives rise only to a cause of action to file a civil suit for realisation of the balance amount and an offence under Section 420 IPC does not stand made out. Proceeding with Annexure-I complaint as against the petitioners will, therefore, be only an abuse of the process of court.

In the result, allowing this Crl.M.C. I quash the proceedings as against the petitioners in C.C. No.70/03 on the file of the Judicial First Class Magistrate's Court, Tirur, registered on the basis of Annexure-I complaint for offence under Section 420 IPC read with Section 34 thereof.

19th December, 2007 (K.P.Balachandran, Judge)

tkv